

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
FRANK FRAZETTA,

Index No.: 08 CIV. 6670

Plaintiff(s)
-against-

**AMENDED
NOTICE OF
REMOVAL**

VANGUARD PRODUCTIONS and
J. DAVID SPURLOCK,

Defendant(s).
-----X

**AMENDED NOTICE OF REMOVAL
OF STATE COURT ACTION TO U.S. DISTRICT COURT**

PLEASE TAKE NOTICE, that Defendant VANGUARD PRODUCTIONS, through the undersigned counsel, files this Notice of Removal, with Defendant J. DAVID SPURLOCK,¹ pursuant to 28 U.S.C. § 1441, 28 U.S.C. § 1446, 28 U.S.C. § 1332(a)(1), F.R.C.P Rules 11 and 81(c), and Local Civil Rule 81.1., and Notices its' Removal to the Southern District Federal Court of New York, of all claims and causes of action in the civil action styled FRANK FRAZETTA v. VANGUARD PRODUCTIONS and J. DAVID SPURLOCK, Index No. 107754/08, pending in New York State Supreme Court, New York County, as follows:

I. State Court Action

1. FRANK FRAZETTA commenced the State Court action by purchasing Index No. 107754/08 on June 4, 2008.

¹ J. David Spurlock has not been served with either Summons or Complaint in this matter, but would join in the removal of this action had service been effected.

2. VANGUARD PRODUCTIONS was served with a 'Summons With Notice' as attached, without Complaint, in New York County, New York, on June 7, 2008.

3. J. DAVID SPURLOCK has not been served with either Summons or Complaint.

4. Undersigned counsel served a 'Notice of Appearance and Demand for Complaint' upon plaintiff's counsel, as attached, on June 24, 2008. The plaintiff's verified complaint, was served upon VANGUARD PRODUCTIONS via the undersigned on July 14, 2008. The Complaint states a claim for damages putting Defendants on notice that the amount sought to be recovered exceeds \$75,000.

5. Other than the stated 'Notice of Appearance and Demand for Complaint', VANGUARD PRODUCTIONS has not served an Answer, Pleading, Motion, or other Paper in the State Court action.

II. Federal Diversity Jurisdiction

6. The Court has subject matter jurisdiction over the State Court action and the claims of action set forth therein pursuant to 28 U.S.C. § 1332(a)(1), diversity of citizenship of the parties for claims seeking recovery of damages alleged exceeding the jurisdictional amount of \$75,000.

7. Venue is properly laid in this Court pursuant to 28 U.S.C. §1391(a)(2), as the Southern District of New York is the judicial district in which the underlying claim was commenced in State Court.

8. The action may be removed to this Court pursuant to the provisions of 28 U.S.C.A. § 1441(a) and 28 U.S.C.A. § 1446(b), as thirty days have not expired since this action became removable to this Court on the 14th day of July, 2008.

9. Defendant's Notice of Removal of this action, filed July 28, 2008, in this Court [D.E. 1], was timely filed and the appropriate fee paid within the thirty (30) days allotted after the receipt of the Complaint notifying Defendants of the jurisdictional amount.

10. The Court for the New York State Supreme Court, New York County has been Notified that Notice of Removal was filed, a copy of which is attached hereto.

11. FRANK FRAZETTA is a Pennsylvania citizen residing in Monroe County.

12. VANGUARD PRODUCTIONS is a New Jersey business entity whose principal place of business is in Hunterdon County.

13. J. DAVID SPURLOCK is a citizen of New Jersey residing in Hunterdon County.

14. The Complaint, as attached, seeks to recover damages from Defendants exceeding the jurisdictional amount of \$75,000, exclusive of attorneys fees and costs as to each Defendant.

15. Plaintiff FRANK FRAZETTA has been Notified in writing of the Notice of Removal, a copy of which is attached hereto.

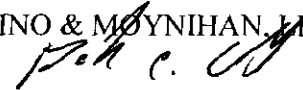
III. Relief Requested

Defendant VANGUARD PRODUCTIONS requests the United States District Court for the Southern District of New York issue such orders and process as are necessary to preserve its jurisdiction over this matter, and reserves the right to raise all defenses and objections to the State Court Action after removal to the District Court, as does J. DAVID SPURLOCK, if and when he may be served with Summons and Complaint.

DATED: August 4, 2008
White Plains, New York

Respectfully Submitted,

PENINO & MOYNIHAN, LLP



/s/:

PATRICK C. CARROLL (PCC-1971)

Attorneys for Defendants

180 East Post Road, Suite 300

White Plains, New York 10601

T+ (914) 949-6996

F+ (914) 949-6203

Email: conpen.pcarroll@gmail.com

TO: LAW OFFICE OF TED KESSLER
Attorney for Plaintiff
302 Fifth Avenue, 8th Floor
New York, NY 10001
(212) 477-3200

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

-----x
FRANK FRAZETTA,

Plaintiff,

- against -

VANGUARD PRODUCTIONS and
J. DAVID SPURLOCK,

Defendants,

-----x
To the above named Defendants,

Index No.: 107754-08

Date Purchased:

June 4, 2008

Plaintiff designates
New York
County as the place of
trial

The basis of the venue is
CPLR 5509

**SUMMONS WITH
NOTICE**

Defendant resides at
186 Center St.
Clinton, NJ 08809


YOU ARE HEREBY SUMMONED to answer the complaint in this action and to serve a copy of your answer, or, if the complaint is not served with this summons, to serve a notice of appearance, on the plaintiff's attorney within 20 days after the service of this summons, exclusive of the day of service (or within 30 days after the service is complete if this summons is not personally delivered to you within the State of New York). In the event that you fail to appear and/or answer a judgment will be taken against you by default for the relief demanded in the complaint.

NOTICE: The nature of this action is misappropriation of name and goodwill and violation of Civil Rights §§50 and 51.

The relief sought is a sum greater than the jurisdictional amount of any other court able to hear and adjudicate this matter.

Upon your failure to appear, judgment will be taken against you by default, and an assessment of damages will be taken by the court.

Dated: New York, New York
June 3, 2008



The Law Office of Tedd Kessler, PC.
Attorneys for Plaintiff
302 Fifth Ave. - 8th floor
New York, N.Y. 10001
(212) 477-3200

Defendants' Address:
186 Center St.
Suite 200
Clinton, NJ 08809

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK.

-----X
FRANK FRAZETTA,

Index No. 107754-08

Plaintiff(s)

-against-

NOTICE OF
APPEARANCE AND
DEMAND FOR
COMPLAINT

VANGUARD PRODUCTIONS and
J. DAVID SPURLOCK

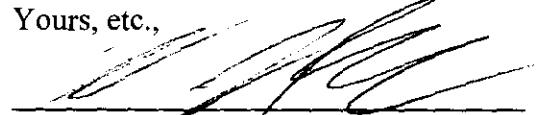
Defendants.
-----X

S I R S:

PLEASE TAKE NOTICE, that the defendants, **VANGUARD PRODUCTIONS AND J. DAVID SPURLOCK**, hereby appears in the above-entitled action, and that the undersigned has been retained as attorneys for said defendant and demands that a copy of the Complaint and all papers in this action be served upon the undersigned at the office and post office address stated below. Please be advised that in the event you fail to serve a Complaint within twenty (20) days, the undersigned will seek dismissal of this action.

DATED: White Plains, New York
June 24, 2008

Yours, etc.,


STEPHEN J. PENINO
PENINO & MOYNIHAN, LLP
Attorneys for Defendant
VANGUARD PRODUCTIONS
180 East Post Road – Suite 300
White Plains, New York 10601
(914) 949-6996
Our File No.: 12-1487

AFFIDAVIT OF SERVICE

STATE OF NEW YORK :
:ss.:
COUNTY OF WESTCHESTER :

Nicole West, being duly sworn, deposes and says: that deponent is not a party to this action, is over the age of 18 and resides at Carmel, New York.

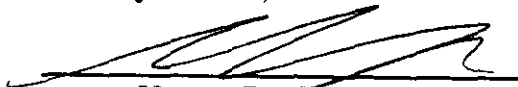
That on the 24th day of June, 2008, deponent served the within Notice of Appearance and Demand for Complaint upon:


THE LAW OFFICE OF TEDD KESSLER, P.C.
302 Fifth Ave. 8th Floor
New York, NY 10001
(212) 477-3200

by depositing the same enclosed in a post-paid properly addressed wrapper, in an official depository under the exclusive care and custody of the United States Post Office within the State of New York.


NICOLE WEST

Sworn to before me this
24th day of June, 2008


Notary Public


STEPHEN J. PENINO
Notary Public, State of New York
No. 4395563
Qualified in Westchester County
Commission Expires 9/27/11

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

Index No.:107754-08

Date Purchased:

June 4, 2008

-----x
FRANK FRAZETTA,

Plaintiff,

**VERIFIED
COMPLAINT**

- against -

VANGUARD PRODUCTIONS and
J. DAVID SPURLOCK,

Defendants,
-----x

Plaintiff, FRANK FRAZETTA, by and through his attorneys, **THE LAW OFFICE OF TEDD KESSLER, P.C.**, as and for his Verified Complaint, at all times hereinafter mentioned, upon information and belief, alleges:

Nature of Case

This is an action for violation of New York Civil Rights §§50 and 51 and commission of various tortuous acts, including, but not limited to, appropriation of Frazetta's good name and goodwill, fraud and tortuous interference with business and contracts.

The Parties

1. Plaintiff FRANK FRAZETTA is a Pennsylvania citizen and world-famous artist who is considered among the twentieth century's most influential and well-known artists.

2. Defendant VANGUARD PRODUCTIONS (hereinafter referred to as "Vanguard") is a New Jersey company which does business in the State of New York.

JUL 14 2008

3. Defendant DAVID SPURLOCK does business as Vanguard.

4. Vanguard is in the book publishing business.

The Publication

5. Vanguard intends to or has published a book entitled, "FRAZETTA DEFINITIVE REFERENCE" (hereinafter referred to as "the book").

6. The book features the artwork of Frank Frazetta and bears his trademark signature on its cover.

7. An application for trademark registration of Frank Frazetta signature has been filed with the Trademark Office.

8. Beginning with, on or about April 2008, and continuously thereafter, the defendants, knowingly and without the written consent of the plaintiff, and contrary to the provisions of N.Y. Civ. Rights Law §§ 50 and 51, used plaintiff's name for advertising and trade purposes in the State of New York and elsewhere in connection with the defendant's said business.

9. During said period the defendants, their agents, servants, employees, wholesalers, distributors and retailers, without plaintiff's consent, caused to be generally circulated and published in and throughout the State of New York and elsewhere, certain literature, circulars or matter, in print and electronic form, prominently using the plaintiff's name in advertising the book.

10. The defendants therein stated that the plaintiff endorsed defendant's product, the book, knowing such statements were contrary to fact and without plaintiff's consent.

11. The statements (hereinafter referred to as "endorsement") defendants released in pursuit of sales for the book is as follows,

"ENDORSED BY FRAZETTA HIMSELF!" AND/OR

"ENDORSED BY THE ARTIST HIMSELF!"

12. A small sample of such true electronic literature, circulars and matter is hereto annexed, marked "Exhibit A" and made a part hereof as if at length set forth herein.

13. Plaintiff, Frank Frazetta, never consented to the use of his name in defendants' advertisements.

14. That there is no agreement, oral or written, between Vanguard and Frank Frazetta regarding publication of the book or use of Plaintiff, Frank Frazetta's name or endorsement.

15. Defendants expect or should reasonably expect their acts to have consequences in the State of New York. Additionally, defendants committed tortious acts without New York which caused and are causing injury to plaintiffs within New York; said defendants regularly do and solicit business in New York, and each of them derives substantial revenue from goods used or consumed or services rendered in the State of New York.

16. Defendants maintain a place of business in New York County at the Big Apple Conventions and ComiCon.

17. Defendants' conduct has been reckless, willful and wanton.

18. Defendants have acted knowingly, willfully and in bad faith.

As and for a First Cause of Action

19. Plaintiff FRANK FRAZETTA repeats and realleges each and every allegation contained in paragraphs 1 through 18 hereof with the same force and effect as if herein set forth at length.

20. Defendants, though their conduct described herein, have made material misrepresentations of fact in the furtherance of their interests.

21. Defendants knew that the statement attributed to plaintiff was false.

22. Defendants intentionally made such statement so that wholesalers, distributors, retailers and the buying public would rely on such false statement.

23. That wholesalers, distributors, retailers, the buying public and others have relied on said statement, such reliance being reasonable.

24. As a result of Defendants' fraudulent conduct, plaintiff has been damaged in the amount of \$2 million.

As and for a Second Cause of Action

25. Plaintiff FRANK FRAZETTA repeats and realleges each and every allegation contained in paragraphs 1 through 24 hereof with the same force and effect as if herein set forth at length.

26. The use by defendants of plaintiff's name and personality for advertising purposes and for purposes of trade was without the consent, written or oral, of plaintiff or anyone authorized by him to give such consent, was entirely unauthorized, and constitutes a violation of Section 50 of the Civil Rights Law of the State of New York.

27. Defendants have failed and refused to cease the use of plaintiff Frank Frazetta's name in their advertising.

28. By reason of the premises, plaintiff has been and is greatly distressed and humiliated, has been exposed to public ridicule and contempt; and the plaintiff has been greatly injured in his reputation and plaintiff has been otherwise greatly injured; and the defendant has been unjustly enriched by unlawful use of the plaintiff's name and reputation as an artist.

29. By reason of the foregoing, plaintiff has sustained damages in the amount of \$2 million.

As and for a Third Cause of Action

30. Plaintiff FRANK FRAZETTA repeats and realleges each and every allegation contained in paragraphs 1 through 29 hereof with the same force and effect as if herein set forth at length.

31. If defendants are permitted to continue to use plaintiff Frank Frazetta's name and personality in connection with the manufacture, distribution, advertising, promotion and sale of the book, plaintiff Frank Frazetta will be irreparably damaged in a manner and to an extent not compensable in money damages, and plaintiff Frank Frazetta has no adequate remedy at law.

32. Defendants have acted knowingly, willfully and in bad faith.

33. By reason of the foregoing and pursuant to Section 51 of the Civil Rights Law of the State of New York, plaintiff Frank Frazetta demands that defendants be permanently and forever enjoined and restrained from using his name or any part thereof in the manufacture, distribution, promotion or sale of the aforesaid book or any other item.

As and for a Fourth Cause of Action

34. Plaintiff FRANK FRAZETTA repeats and realleges each and every allegation contained in paragraphs 1 through 33 hereof with the same force and effect as if herein set forth at length.

35. Defendants have published false and defamatory statements of fact concerning Plaintiff with the intent to injure Plaintiff in his business, trade or profession, and with ill will, knowledge of falsity, and reckless disregard for the truth.

36. The Defendants' statements have impugned the basic integrity of Plaintiff and his business.

37. As a result of the foregoing, Plaintiff has incurred damages in the amount of \$2 million.

As and for a Fifth Cause of Action

38. Plaintiff FRANK FRAZETTA repeats and realleges each and every allegation contained in paragraphs 1 through 37 hereof with the same force and effect as if herein set forth at length.

39. Plaintiff has contracts with publishers, including but not limited to Frazetta Prints, Underwood Publishing and Spectrum.

40. Defendants knew or should have known of the contracts between Plaintiff and publishers, especially in light of the facts that books, including, Rough Works, was published on or about January, 2008, and new editions of Icon, Legacy and Testament were published on or about April 27, 2008. These books feature art by Frank Frazetta. It is believed that the book will feature art from these books for which consent has never been obtained.

41. Defendants, intentionally, by way of fraud, misrepresentation, and deceit, improperly interfered in Plaintiff's contracts as cited herein.

42. The interference with said contracts, which Defendants did cause, has resulted in financial damage to Plaintiff herein, including, *inter alia*, attorney fees, lost profits and harm to reputation in an amount to be determined at trial.

As and for a Sixth Cause of Action

43. Plaintiff FRANK FRAZETTA repeats and realleges each and every allegation contained in paragraphs 1 through 42 hereof with the same force and effect as if herein set forth at length.

44. At all relevant times, Defendant was aware of the business relations between Plaintiff, his publisher, admirers, fans, artists, customers and potential customers.

45. Despite such knowledge, Defendant purposely, wrongfully and/or unlawfully interfered with Plaintiff's business relations, by, for example, intentionally making false statements attributed to Plaintiff and using Plaintiff's talents and works for defendants' own purposes.

46. By reason of the premises, plaintiff has been and is greatly distressed and humiliated, has been exposed to public ridicule and contempt; and the plaintiff has been greatly injured in his reputation and plaintiff has been otherwise greatly injured; and the defendant has been unjustly enriched by unlawful use of the plaintiff's name and reputation as an artist.

47. By reason of the foregoing, plaintiff has sustained damages in the amount of \$2 million.

As and for a Seventh Cause of Action

48. Plaintiff FRANK FRAZETTA repeats and realleges each and every allegation contained in paragraphs 1 through 47 hereof with the same force and effect as if herein set forth at length.

49. Due to the foregoing, defendants have committed *Prima Facie* torts, thus damaging plaintiff in the amount of \$2 million.

WHEREFORE, plaintiff demands,

1. An order permanently enjoining defendant from using the name, image or likeness or any reference to Frank Frazetta;
2. Compensatory damages of \$2,000,000;
3. Exemplary damages of \$500,000;

4. Other damages to be proven at trial;
5. Requiring defendants to account to plaintiff for all proceeds derived from their wrongful conduct; and
6. Such other and further relief as to the Court may seem just and proper under all the circumstances, including, but not limited to, plaintiff's costs and attorney's fees in this action.

Dated: New York, New York
July 4, 2008



The Law Office of Tedd Kessler, PC.
Attorneys for Plaintiff
302 Fifth Ave. - 8th floor
New York, N.Y. 10001
(212) 477-3200

Frazetta: The Definitive Reference

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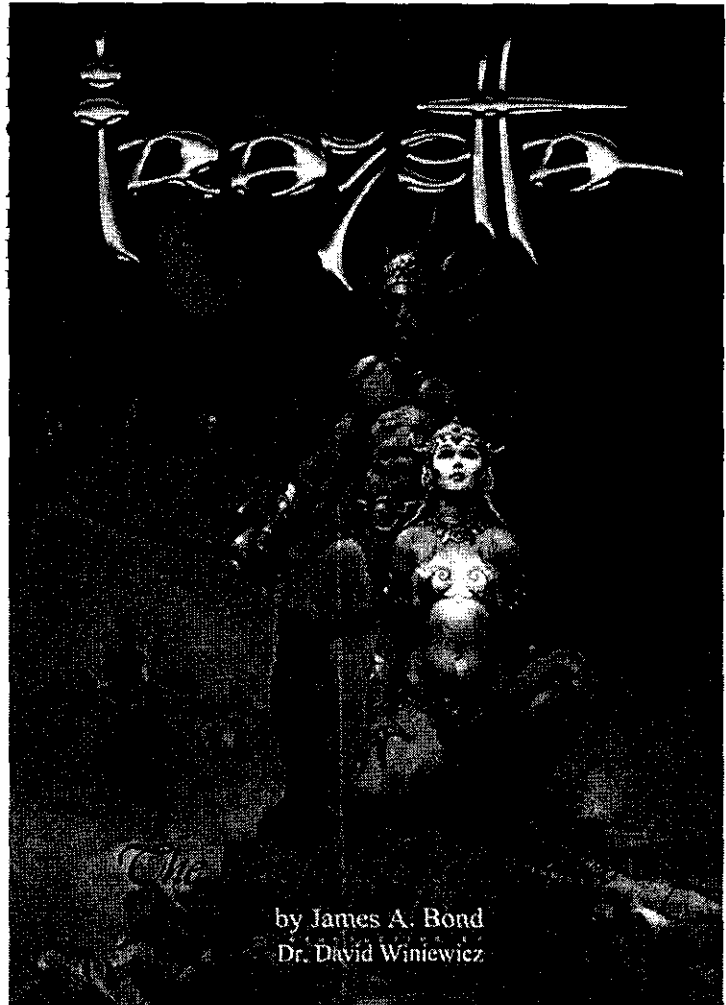
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** Dozens of rare images, including Conan, Tarzan, John Carter of Mars, more!*

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by James A. Bond
Dr. David Winiewicz

Compiled by James A. Bond (no relation to the international spy) is a lifetime collector of Frank Frazettas zwork. He lives in Toledo, Ohio.

Edited by J. David Spurlock, an artist and historian, has written and edited many books on fantasy art and pop culture. He lives in Clinton, NJ.

Andrew Steven is a specialty-clothing designer and renowned art collector who lives in New York City.

Dr. David Winiewicz, a noted scholar and collector of the works of Frank Frazetta, and close personal friend of the artist. He lives in Las Vegas.

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Frazetta: Definitive Reference HC - Westfield Comics

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Pages: 200
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Format: Hardcover
Publisher: Vanguard Productions
Release Date: 2008-06-25
Color: Partial Color
Item Number: APR084163

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Amazing Spider-Ma...

Features &
Interviews



New: KC: Con
Stories 1

PENINO & MOYNIHAN, LLP

Attorneys at Law

Stephen J. Penino, Esq.
Patrick J. Moynihan, Esq.
Douglas Falch, Esq.
Steven J. Monn, Esq.*

180 East Post Road, Suite 300
White Plains, New York 10601

Telephone (914) 949-6996
Fax (914) 949-6203

Please Always Reply to White Plains Office

Vincent J. Aceste, Esq.
(Of Counsel)

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50 Charles Lindbergh Blvd.
Uniondale, NY 11553
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72 North St., Suite 303A
Danbury, CT 06810
(203) 739-0231

Stephen L. Barry, Esq.
Patrick C. Carroll, Esq.*
Matthew Rego, Esq.
Noel L.C. Williams, Esq.
Heather Q. Wallace, Esq.*
Vinai C. Vinlander, Esq.**
Audrey D. Zwolski, Esq.*
Daniel W. Worontzoff, Esq.
Lorenzo L. Angelino, Esq.*
Henry L. Liao, Esq.
Richard E. Rowe Jr., Esq.
Scott D. Taffet, Esq.

Also admitted in CT *

Also admitted in WI **

July 29, 2008

Attn: Clerk's Office
New York County Supreme Court
60 Centre Street
New York, New York 10007

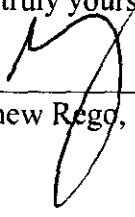
Re: Frazetta v. Vanguard Productions, et al
State Index No.: 107754/08
Federal Index No.: 08 CIV. 6670
Our File No.: 12-1487

Dear Sir or Madam:

Enclosed for filing please find defendants' Notice of Removal of State Court action to U.S. District Court and Rule 7.1 disclosure. According to 28 U.S.C. §1446(d) the matter is effectively removed from the State Court and no further proceedings shall be had in the State Court.

Would you kindly stamp the copy and return it in the enclosed self addressed stamped envelope.

Very truly yours,


Matthew Rego, Esq.

MR:gms
Encls.

PENINO & MOYNIHAN, LLP

Attorneys at Law

Stephen J. Penino, Esq.
Patrick J. Moynihan, Esq.
Douglas Falch, Esq.
Steven J. Monn, Esq.*

180 East Post Road, Suite 300
White Plains, New York 10601

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Please Always Reply to White Plains Office

Vincent J. Aceste, Esq.
(Of Counsel)

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72 North St., Suite 303A
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Scott D. Taffet, Esq.

Also admitted in CT *
Also admitted in WI **

July 29, 2008

Law Office of Ted Kessler
302 Fifth Avenue, 8th Floor
New York, NY 10001

Re: Frazetta v. Vanguard Productions, et al
State Index No.: 107754/08
Federal Index No.: 08 CIV. 6670
Our File No.: 12-1487

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Very truly yours,


Matthew Rego, Esq.

MR:gms
Encls.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

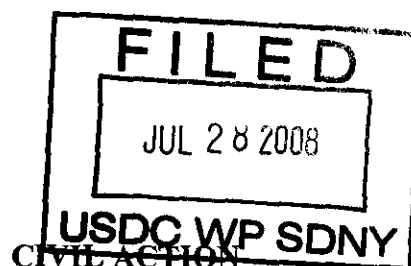
-----X
FRANK FRAZETTA,

Plaintiff,

-against-

VANGUARD PRODUCTIONS and
J. DAVID SPURLOCK,

Defendants.
-----X



Case No.:

08 CIV. 6670
JUDGE KARAS

Notice of Removal of State Court Action to U.S. District Court

PLEASE TAKE NOTICE, that the defendants, VANGUARD PRODUCTIONS and J. DAVID SPURLOCK, (hereinafter "VANGUARD"), through its undersigned counsel hereby files this Notice of Removal pursuant to 28 U.S.C. § 1446 and 28 U.S.C. § 1132(a) (1). VANGUARD hereby removes to the Southern District Federal Court of New York all claims and causes of action in the civil action styled **Frank Frazetta v. VanGuard Productions and J. David Spurlock**, Index No. 107754/08 now pending in the New York State Supreme Court, New York County.

The grounds for removal are as follows:


1. The plaintiff is a resident of Pennsylvania.
2. Defendant, VANGUARD, is a New Jersey business entity.
3. The District Court has subject matter jurisdiction over the State Court Action and the claims and causes of action therein pursuant to 28 U.S.C. 1132 (a) (1) in that there is complete diversity of citizenship and the amount in controversy is over \$75,000.00.

4. Defendants expressly reserve the right to raise all defenses and objections to the State Court Action after it is removed to the District Court.

DATED: White Plains, New York
July 25, 2008

Yours, etc.,

PENINO & MOYNIHAN, LLP

BY: 
PATRICK C. CARROLL (PCC-1971)
Attorneys for Defendants
180 East Post Road, Suite 300
White Plains, New York 10601
(914) 949-6996
Our File No. 12-1487

TO: LAW OFFICES OF TED KESSLER
Attorney for Plaintiff
302 Fifth Avenue, 8th Floor
New York, NY 10001
(212) 477-3200

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
FRANK FRAZETTA,

Plaintiff,

-against-

VANGUARD PRODUCTIONS and
J. DAVID SPURLOCK,

Defendants.
-----X

CIVIL ACTION

Case No.:

Notice of Removal of State Court Action to U.S. District Court

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1. The plaintiff is a resident of Pennsylvania.
2. Defendant, VANGUARD, is a New Jersey Corporation.
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Defendants

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DATED: White Plains, New York
July 25, 2008

Yours, etc.,

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TO: LAW OFFICES OF TED KESSLER
Attorney for Plaintiff
302 Fifth Avenue, 8th Floor
New York, NY 10001
(212) 477-3200

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

Index No.:107754-08

Date Purchased:

June 4, 2008

-----x
FRANK FRAZETTA,

Plaintiff,

**VERIFIED
COMPLAINT**

- against -

VANGUARD PRODUCTIONS and
J. DAVID SPURLOCK,

Defendants,
-----x

Plaintiff, FRANK FRAZETTA, by and through his attorneys, **THE LAW OFFICE OF TEDD KESSLER, P.C.**, as and for his Verified Complaint, at all times hereinafter mentioned, upon information and belief, alleges:

Nature of Case

This is an action for violation of New York Civil Rights §§50 and 51 and commission of various tortuous acts, including, but not limited to, appropriation of Frazetta's good name and goodwill, fraud and tortuous interference with business and contracts.

The Parties

1. Plaintiff FRANK FRAZETTA is a Pennsylvania citizen and world-famous artist who is considered among the twentieth century's most influential and well-known artists.

2. Defendant VANGUARD PRODUCTIONS (hereinafter referred to as "Vanguard") is a New Jersey company which does business in the State of New York.

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3. Defendant DAVID SPURLOCK does business as Vanguard.
4. Vanguard is in the book publishing business.

The Publication

5. Vanguard intends to or has published a book entitled, "FRAZETTA DEFINITIVE REFERENCE" (hereinafter referred to as "the book").

6. The book features the artwork of Frank Frazetta and bears his trademark signature on its cover.

7. An application for trademark registration of Frank Frazetta signature has been filed with the Trademark Office.

8. Beginning with, on or about April 2008, and continuously thereafter, the defendants, knowingly and without the written consent of the plaintiff, and contrary to the provisions of N.Y. Civ. Rights Law §§ 50 and 51, used plaintiff's name for advertising and trade purposes in the State of New York and elsewhere in connection with the defendant's said business.

9. During said period the defendants, their agents, servants, employees, wholesalers, distributors and retailers, without plaintiff's consent, caused to be generally circulated and published in and throughout the State of New York and elsewhere, certain literature, circulars or matter, in print and electronic form, prominently using the plaintiff's name in advertising the book.

10. The defendants therein stated that the plaintiff endorsed defendant's product, the book, knowing such statements were contrary to fact and without plaintiff's consent.

11. The statements (hereinafter referred to as "endorsement") defendants released in pursuit of sales for the book is as follows,

"ENDORSED BY FRAZETTA HIMSELF!" AND/OR

"ENDORSED BY THE ARTIST HIMSELF!"

12. A small sample of such true electronic literature, circulars and matter is hereto annexed, marked "Exhibit A" and made a part hereof as if at length set forth herein.

13. Plaintiff, Frank Frazetta, never consented to the use of his name in defendants' advertisements.

14. That there is no agreement, oral or written, between Vanguard and Frank Frazetta regarding publication of the book or use of Plaintiff, Frank Frazetta's name or endorsement.

15. Defendants expect or should reasonably expect their acts to have consequences in the State of New York. Additionally, defendants committed tortious acts without New York which caused and are causing injury to plaintiffs within New York; said defendants regularly do and solicit business in New York, and each of them derives substantial revenue from goods used or consumed or services rendered in the State of New York.

16. Defendants maintain a place of business in New York County at the Big Apple Conventions and ComiCon.

17. Defendants' conduct has been reckless, willful and wanton.

18. Defendants have acted knowingly, willfully and in bad faith.

As and for a First Cause of Action

19. Plaintiff FRANK FRAZETTA repeats and realleges each and every allegation contained in paragraphs 1 through 18 hereof with the same force and effect as if herein set forth at length.

20. Defendants, though their conduct described herein, have made material misrepresentations of fact in the furtherance of their interests.

21. Defendants knew that the statement attributed to plaintiff was false.

22. Defendants intentionally made such statement so that wholesalers, distributors, retailers and the buying public would rely on such false statement.

23. That wholesalers, distributors, retailers, the buying public and others have relied on said statement, such reliance being reasonable.

24. As a result of Defendants' fraudulent conduct, plaintiff has been damaged in the amount of \$2 million.

As and for a Second Cause of Action

25. Plaintiff FRANK FRAZETTA repeats and realleges each and every allegation contained in paragraphs 1 through 24 hereof with the same force and effect as if herein set forth at length.

26. The use by defendants of plaintiff's name and personality for advertising purposes and for purposes of trade was without the consent, written or oral, of plaintiff or anyone authorized by him to give such consent, was entirely unauthorized, and constitutes a violation of Section 50 of the Civil Rights Law of the State of New York.

27. Defendants have failed and refused to cease the use of plaintiff Frank Frazetta's name in their advertising.

28. By reason of the premises, plaintiff has been and is greatly distressed and humiliated, has been exposed to public ridicule and contempt; and the plaintiff has been greatly injured in his reputation and plaintiff has been otherwise greatly injured; and the defendant has been unjustly enriched by unlawful use of the plaintiff's name and reputation as an artist.

29. By reason of the foregoing, plaintiff has sustained damages in the amount of \$2 million.

As and for a Third Cause of Action

30. Plaintiff FRANK FRAZETTA repeats and realleges each and every allegation contained in paragraphs 1 through 29 hereof with the same force and effect as if herein set forth at length.

31. If defendants are permitted to continue to use plaintiff Frank Frazetta's name and personality in connection with the manufacture, distribution, advertising, promotion and sale of the book, plaintiff Frank Frazetta will be irreparably damaged in a manner and to an extent not compensable in money damages, and plaintiff Frank Frazetta has no adequate remedy at law.

32. Defendants have acted knowingly, willfully and in bad faith.

33. By reason of the foregoing and pursuant to Section 51 of the Civil Rights Law of the State of New York, plaintiff Frank Frazetta demands that defendants be permanently and forever enjoined and restrained from using his name or any part thereof in the manufacture, distribution, promotion or sale of the aforesaid book or any other item.

As and for a Fourth Cause of Action

34. Plaintiff FRANK FRAZETTA repeats and realleges each and every allegation contained in paragraphs 1 through 33 hereof with the same force and effect as if herein set forth at length.

35. Defendants have published false and defamatory statements of fact concerning Plaintiff with the intent to injure Plaintiff in his business, trade or profession, and with ill will, knowledge of falsity, and reckless disregard for the truth.

36. The Defendants' statements have impugned the basic integrity of Plaintiff and his business.

37. As a result of the foregoing, Plaintiff has incurred damages in the amount of \$2 million.

As and for a Fifth Cause of Action

38. Plaintiff FRANK FRAZETTA repeats and realleges each and every allegation contained in paragraphs 1 through 37 hereof with the same force and effect as if herein set forth at length.

39. Plaintiff has contracts with publishers, including but not limited to Frazetta Prints, Underwood Publishing and Spectrum.

40. Defendants knew or should have known of the contracts between Plaintiff and publishers, especially in light of the facts that books, including, Rough Works, was published on or about January, 2008, and new editions of Icon, Legacy and Testament were published on or about April 27, 2008. These books feature art by Frank Frazetta. It is believed that the book will feature art from these books for which consent has never been obtained.

41. Defendants, intentionally, by way of fraud, misrepresentation, and deceit, improperly interfered in Plaintiff's contracts as cited herein.

42. The interference with said contracts, which Defendants did cause, has resulted in financial damage to Plaintiff herein, including, *inter alia*, attorney fees, lost profits and harm to reputation in an amount to be determined at trial.

As and for a Sixth Cause of Action

43. Plaintiff FRANK FRAZETTA repeats and realleges each and every allegation contained in paragraphs 1 through 42 hereof with the same force and effect as if herein set forth at length.

44. At all relevant times, Defendant was aware of the business relations between Plaintiff, his publisher, admirers, fans, artists, customers and potential customers.

45. Despite such knowledge, Defendant purposely, wrongfully and/or unlawfully interfered with Plaintiff's business relations, by, for example, intentionally making false statements attributed to Plaintiff and using Plaintiff's talents and works for defendants' own purposes.

46. By reason of the premises, plaintiff has been and is greatly distressed and humiliated, has been exposed to public ridicule and contempt; and the plaintiff has been greatly injured in his reputation and plaintiff has been otherwise greatly injured; and the defendant has been unjustly enriched by unlawful use of the plaintiff's name and reputation as an artist.

47. By reason of the foregoing, plaintiff has sustained damages in the amount of \$2 million.

As and for a Seventh Cause of Action

48. Plaintiff FRANK FRAZETTA repeats and realleges each and every allegation contained in paragraphs 1 through 47 hereof with the same force and effect as if herein set forth at length.

49. Due to the foregoing, defendants have committed *Prima Facie* torts, thus damaging plaintiff in the amount of \$2 million.

WHEREFORE, plaintiff demands,

1. An order permanently enjoining defendant from using the name, image or likeness or any reference to Frank Frazetta;
2. Compensatory damages of \$2,000,000;
3. Exemplary damages of \$500,000;

4. Other damages to be proven at trial;

5. Requiring defendants to account to plaintiff for all proceeds derived from their wrongful conduct; and

6. Such other and further relief as to the Court may seem just and proper under all the circumstances, including, but not limited to, plaintiff's costs and attorney's fees in this action.

Dated: New York, New York
July 4, 2008

A handwritten signature in black ink, appearing to be 'Tedd Kessler', is written over a horizontal line.

The Law Office of Tedd Kessler, PC.
Attorneys for Plaintiff
302 Fifth Ave. - 8th floor
New York, N.Y. 10001
(212) 477-3200

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